

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-02-AT-246
)	
Adelphia Communications Corporation)	NAL/Acct. No.200232480013
Operator of Cable System in Cullman, Alabama)	
Coudersport, Pennsylvania)	FRN 0003-2535-98
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: July18, 2002

By the Enforcement Bureau, Atlanta:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find that Adelphia Communications Corporation (“Adelphia”), owner of Adelphia Communications cable system in Cullman, Alabama, is apparently liable for a forfeiture in the amount of eight thousand dollars (\$8,000) for willfully and repeatedly violating Section 11.35(a) of the Commission's Rules (“Rules”)¹ by failing to maintain operational Emergency Alert System (“EAS”) equipment.

II. BACKGROUND

2. On June 27, 2002, an agent of the Commission’s Atlanta Field Office inspected the EAS installation of Adelphia’s cable television system in Cullman, Alabama. At the time of inspection, the EAS equipment, although present, was not installed and connected so as to be operational. There were no entries in the cable system record indicating that the EAS had been taken out of service for repair. Records did indicate that the last partially received test was dated February 2, 2000. There were no other records of any EAS tests for the period of February 2, 2000 to the present.

III. DISCUSSION

3. Section 11.35(a) of the Rules specifies that cable systems are responsible for ensuring that EAS encoders, EAS decoders and Attention Signal generating and receiving equipment used as part of the EAS are installed so that the monitoring and transmitting functions are available during the times the systems are in operation. On June 27, 2002, Adelphia’s cable system had no EAS equipment installed and operational, the cable system records showed no evidence of EAS tests conducted or received for the period February 2, 2000 to June 27, 2002, nor did the system record indicate EAS equipment had been

¹ 47 C.F.R. § 11.35(a).

removed from service for repair.²

4. Based on the evidence before us, we find Adelphia Communications Corporation willfully³ and repeatedly⁴ violated Section 11.35(a) of the Rules by failing to have operational EAS equipment.

5. Pursuant to Section 1.80(b)(4) of the Rules,⁵ the base forfeiture amount for failure to have operational EAS equipment is \$8,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended (“Act”), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁶ Considering the entire record and applying the factors listed above, this case warrants an \$8,000 forfeiture.

IV. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁷ and Sections 0.111, 0.311 and 1.80 of the Rules,⁸ Adelphia Communications Corporation is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of eight thousand dollars (\$8,000) for willful and repeated violation of Section 11.35(a) of the Rules by failing to have operational EAS equipment.

7. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this *NAL*, Adelphia Communications Corporation SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

8. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the *NAL*/Acct. No. and FRN referenced above. Requests for payment of the full amount of this *NAL* under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th

² EAS activations and tests, failures to receive such tests, and EAS equipment malfunctions must be recorded in the cable system record. *See* 47 C.F.R. §§ 11.35(a)-(b), 11.55(c)(7) and 11.61(b).

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act” *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

⁴ The term “repeated,” when used with reference to the commission or omission of any act, “means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2).

⁵ 47 C.F.R. § 1.80(b)(4).

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. §§ 0.111, 0.311, 1.80.

Street, S.W., Washington, D.C. 20554.⁹

9. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

10. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

11. IT IS FURTHER ORDERED THAT a copy of this *NAL* shall be sent by regular mail and Certified Mail Return Receipt Requested to Adelpia Communications Corporation, One North Main Street; Coudersport, PA 16915. An additional copy shall be sent by regular mail and Certified Mail Return Receipt Requested to Adelpia Communications, 256 Hwy 278 E., Cullman, Alabama 35055.

FEDERAL COMMUNICATIONS COMMISSION

Fred L. Broce
District Director
Atlanta Office, Enforcement Bureau

⁹ See 47 C.F.R. § 1.1914.